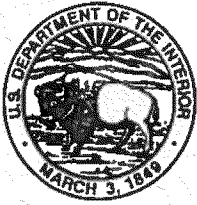


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United States Department of the Interior Fish and Wildlife Service



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January 10, 2014

Mr. George DeLancey
U.S. Army Corps of Engineers
CELRL-OP-FW
P.O. Box 489
Newburgh, IN 47629-0489

Dear Mr. DeLancey:

This responds to your letter of August 13, 2010 requesting U.S. Fish and Wildlife Service (FWS) comments on a permit application (LRL-2013-635) for the United Minerals Company, LLC proposed Seven Hills Mine (S-00357) in Warrick County, Indiana.

These comments are consistent with the Fish and Wildlife Coordination Act (16 U.S.C. 661 et. seq.), the National Environmental Policy Act of 1969, the Endangered Species Act of 1973, the U.S. Fish and Wildlife Service's Mitigation Policy, and the Indiana Coal Mining Regulatory Program, Section 310 IAC 12-3-107.

The proposed permit area covers 2351 acres. The proposed water resource impacts include over 31,762 feet of stream channel (2,589 feet ephemeral, 28,973 feet intermittent, and 200 feet perennial), approximately 458 acres of wetlands (401.5 forested, 4.45 emergent, and 52.15 shrub), and 29 acres of open water.

The permit area contains a combination of undisturbed bottomland along Pigeon Creek, including approximately 7,876 feet of the Pigeon Creek channel, and previously mined land in the North Millersburg, South Millersburg and Ayrshire mines. Most of the previously mined land has been reclaimed to a mixture of forest, wildlife land and agricultural land.

Wildlife Habitat

The affected wetlands and other bottomland forest provide abundant habitat for numerous and significant wildlife species, including migratory birds, Indiana bats (*Myotis sodalis*), Northern long-eared bats (*M. septentrionalis*), and the copperbelly water snake (*Nerodia erythrogaster neglecta*). We do not have a comprehensive bird species list for the permit area, however bird surveys by Audubon Society members in the Buckskin Bottoms area north (upstream) of the

permit area reported over 180 species of birds including 9 species listed at that time as State-endangered species.

An Indiana bat maternity colony from a known primary maternity roost tree has been documented using the southern portion of the proposed permit area for foraging, and bat survey results suggest the presence of an additional maternity colony which forages on the northern end of the permit area. The proposed mining activity would temporarily or permanently eliminate approximately 690 acres of summer habitat for this species and restored forest will not become suitable habitat for many years.

At least one Northern long-eared bat maternity colony has also been documented using the permit area with the capture of reproductively active females during bat surveys. Northern long-eared bats generally require similar summer habitat to that of Indiana bats, therefore the proposed mining activity would impact approximately 690 acres of habitat for this species.

The copperbelly water snake is known to have reproducing populations along the Pigeon Creek corridor. Listing in southern Indiana was precluded due to development of a Copperbelly Water Snake Conservation Agreement and Strategy endorsed by the FWS, the Indiana DNR, and the Indiana Coal Council (Agreement). Even though it has expired, the Agreement has proven effective at avoiding and conserving copperbelly water snake habitat. This permit application is the first action we are aware of that would not follow the tenants of the Agreement. This type of mining activity in prime habitat could cause the FWS to re-evaluate listing of the southern population of the copperbelly water snake.

Mitigation

A thorough review of the proposed mitigation has not been conducted; however, the FWS asserts that wetlands of this magnitude and in this landscape location cannot be adequately restored based on the failure of previous efforts associated with the North Millersburg Mine. The North Millersburg mined land on the east side of the Pigeon Creek floodplain was to have been restored to its pre-mining condition of bottomland forest, however the actual restoration consisted chiefly of a mixture of upland fields, upland non-forested wildlife habitat and large, shallow permanent impoundments.

Cumulative Impacts

The proposed Seven Hills Mine, in combination with the two previous Millersburg Mines, would permanently or temporarily eliminate the vast majority of approximately 4000 acres of habitat along the Pigeon Creek corridor. As previously stated in this letter, the bottomland forest in the North Millersburg permit area was permanently lost. In addition, the newly proposed High Point Mine would impact approximately 2,500 acres of wildlife and forest habitat, including 27 acres of wetlands and 63,000 linear feet of streams.

A November 2013 letter from the U.S. Environmental Protection Agency (EPA) to the U.S. Army Corps of Engineers (Corps) requests that the Corps treat the High Point Mine and the Seven Hills Mine as a single project. The FWS supports this request since the mines have overlapping permit boundaries and will share a coal processing plant.

Endangered Species

The proposed project is within the range of the Federally endangered Indiana bat (*Myotis sodalis*), sheepnose mussel (*Plethobasus cyphus*) and the northern long-eared bat (*M. septentrionalis*), a species proposed as endangered under the Endangered Species Act. The sheepnose mussel is restricted to the Ohio River and will not be impacted by the proposed mining operation.

As stated previously, there is known summer habitat for Indiana and northern long-eared bats present throughout the permit area, and the proposed mining operation will eliminate a significant amount of habitat for these species. In accordance with our national biological opinion issued to the Office of Surface Mining, United Minerals Company developed an Indiana Bat Protection and Enhancement Plan (PEP) outlining measures to minimize take of Indiana bats. To date, the northern long-eared bat has not been addressed.

The northern long-eared bat was proposed for federal listing under the ESA on October 2, 2013. Species proposed for listing are not afforded protection under the ESA; however as soon as a listing becomes effective, the prohibition against take applies. The final listing decision for the northern long-eared bat is expected in October 2014. This could cause project delays, since potential adverse effects to the northern long-eared bat have not been previously addressed. Therefore, the FWS strongly encourages applicants to address the northern long-eared bat while it is proposed for listing. Interim guidance on addressing impacts to northern long-eared bats can be found online at <http://www.fws.gov/midwest/endangered/mammals/nlba/pdf/NLEBinterimGuidance6Jan2014.pdf>

In conclusion, the FWS continues to oppose a mining plan that will substantially alter the Pigeon Creek bottoms and result in hundreds of acres of wetland impacts. We recommend that the mining operation be altered to avoid mining disturbance in existing forest and wetland habitat in the Pigeon Creek floodplain.

Due to the extensive wildlife habitat proposed under this mining plan, and the extent of cumulative impacts of mining in the Pigeon Creek bottomland corridor, we believe that development of an Environmental Impact Statement is appropriate.

The FWS considers the Pigeon Creek floodplain to constitute a productive and valuable public resource which serves significant natural biological functions, including food chain production, general habitat, and nesting, spawning, rearing and resting habitat for aquatic and land species. As defined by the Section 404(b)(1) Guidelines, we consider the site to be a Special Aquatic Site that possesses special ecological characteristics of productivity, habitat, wildlife protection and

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other important and easily disrupted ecological values. Therefore, the U.S. Fish and Wildlife Service requests that this permit be denied.

Pursuant to Part IV, Paragraph 3(a) of the Memorandum of Agreement Between the Department of the Interior and the Department of the Army on Section 404(q) of the Clean Water Act dated December 21, 1992, it is the opinion of the Department of the Interior that the project may result in substantial and unacceptable impacts to aquatic resources of national importance.

We are providing this letter to reserve the option to elevate this individual permit action if significant differences remain between our agencies over the disposition of this permit, in accordance with the Memorandum of Agreement (MOA) between the Department of the Interior and the Department of the Army on Section 404(q) of the Clean Water Act, dated December 21, 1992. Pursuant to Part IV, Paragraph 3(b) of the MOA, it is the opinion of the Department of the Interior that the project will result in substantial and unacceptable impacts to aquatic resources of national importance.

For further discussion, please contact Marissa Reed at (812) 334-4261 ext. 1215 or marissa_reed@fws.gov.

Sincerely yours,



Scott E. Pruitt
Field Supervisor

cc: Ramona Briggeman, IDNR Division of Reclamation, Jasonville, IN
Eric Langer, IDNR Division of Reclamation, Jasonville, IN
Melissa Blankenship, US EPA, Chicago, IL

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